

**Page Denied**

Contract No. RD-107

I N D E X

## R &amp; D MASTER TYPE CONTRACT

Title of Article	Article No.	Page No.
Accounting System . . . . .	5A (a) (1) . . . . .	5
Aliens, Employment of . . . . .	32 . . . . .	28
Allowable Cost . . . . .	5 (a). . . . .	3
Alterations . . . . .	36 . . . . .	30
Assignment of Rights. . . . .	31 . . . . .	28
Audit . . . . .	5 (d). . . . .	3
Authorization and Consent . . . . .	15 . . . . .	16
Buy American. . . . .	29 . . . . .	27
Changes . . . . .	3 . . . . .	2
Convict Labor . . . . .	27 . . . . .	26
Copyrights. . . . .	33 . . . . .	28
Costs, Allowable. . . . .	5 (a). . . . .	3
Costs, Limitation of. . . . .	4 . . . . .	2
Costs, Statement of . . . . .	5 (b) & (d). . . . .	3
Covenant Against Contingent Fees. . . . .	22 . . . . .	25
Defects, Correction of. . . . .	11 . . . . .	13
Definitions . . . . .	1 . . . . .	1
Delay in Delivery of Data . . . . .	10 . . . . .	13
Delays, Excusable . . . . .	30 . . . . .	27
Disputes . . . . .	21 . . . . .	24
Eight-Hour Law. . . . .	23 . . . . .	25
Fixed Fee . . . . .	5 (a). . . . .	3
Government Property . . . . .	6 . . . . .	7
Gratuities. . . . .	34 . . . . .	29
Inspection. . . . .	11 . . . . .	13
Insurance-Liability to Third Persons. . . . .	7 . . . . .	11
Invoicing . . . . .	5 (b). . . . .	3
Labor, Convict. . . . .	27 . . . . .	26
Labor Disputes, Notice to the Govt. of. . . . .	25 . . . . .	26
Limitation of Cost. . . . .	4 . . . . .	2
Material Listing . . . . .	5 (e). . . . .	4
Non-Discrimination In Employment. . . . .	26 . . . . .	26
Officials Not to Benefit. . . . .	28 . . . . .	26
Patent Applications, Filing of. . . . .	16 . . . . .	16
Patent Infringement, Notice and Assistance Regarding . . . . .	14 . . . . .	16
Patent Rights . . . . .	17 . . . . .	17
Payment . . . . .	5 (c). . . . .	3
Property. Government . . . . .	6 . . . . .	7
Records . . . . .	5A . . . . .	5
Release . . . . .	5 (f). . . . .	4

July 1955

(1)

AGENCY STERILE

SECRET

DOC	1	REV DATE	2 APR 1980	BY	064540
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I N D E X

## R &amp; D MASTER TYPE CONTRACT

<u>Title of Article</u>	<u>Article No.</u>	<u>Page No.</u>
Reporting of Royalties . . . . .	19 . . . . .	22
Reproduction and Use of Technical Data . . .	18 . . . . .	22
Scope of the Subject Work. . . . .	2 . . . . .	1
Security . . . . .	20 . . . . .	24
Shipments . . . . .	9 . . . . .	12
Small Business Concerns, Utilization of. . .	13 . . . . .	16
Statement of Costs . . . . .	5 (b) & (d). . . . .	3 & 4
Subcontracts . . . . .	12 . . . . .	15
Superseding Specifications . . . . .	8 . . . . .	12
Termination . . . . .	35 . . . . .	29
Vouchering . . . . .	5 (b). . . . .	3
Walsh-Healey Public Contracts Act . . . . .	24 . . . . .	26

(11)

July 1955

Contract No. RD-107

Agreement made this 19th day of March 1956, between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and

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25X1

called "the Contractor").

**WITNESSETH:**

**WHEREAS**, the Contractor maintains facilities for research and development, and has available the services of qualified personnel; and,

**WHEREAS**, the Government desires the Contractor to conduct certain research and development work and construct whatever equipment or articles may be hereinafter specified; and,

**WHEREAS**, the Contractor is willing to provide said facilities and qualified personnel and undertake such work on a cost-plus-a-fixed-fee basis as hereinafter specified;

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS.**

"Agency" refers to the Government Agency represented by the Contracting Officer executing this contract. "Contracting Officer" refers to the present Contracting Officer and his successors in office. "Director" refers to the present Director of the Agency and his successors in office. "Authorized Representative" refers to any person designated in writing as such by the Contracting Officer or the Director, and such person can act hereunder only in the limited respects and to the extent specified in provisions of this contract wherein the term "Authorized Representative" is specifically used.

**ARTICLE 2. SCOPE OF SUBJECT WORK.**

The Contractor shall supply the necessary qualified personnel, facilities, and materials, and shall use its best efforts to conduct the work specified in each Task Order established hereunder in accordance with the specifications, schedules, and drawings stated in said Task Orders. The Contractor shall cooperate in consultation and otherwise as may be practicable with the Contracting Officer or his authorized representative upon the request of either. Monthly progress reports outlining the work accomplished under each Task Order, shall be furnished the Contracting Officer. Technical Reports, prepared in the manner normally practiced by the Contractor, shall be furnished the Contracting Officer at such intervals as may be indicated by the Task Order to which the report pertains. In addition, the Contractor shall prepare specifications, drawings on reproducible masters, and shall supply full information concerning the components, devices, apparatus and methods as provided for under each Task Order and

**SECRET**

shall deliver them, together with all models developed thereunder, to the Contracting Officer or his designee upon their request. The Contractor shall maintain records in which descriptions and illustrations of any inventions made in this work shall be entered as they are made, with appropriate dates, signatures, and witnesses.

### ARTICLE 3. CHANGES.

The Contracting Officer may at any time, by a written order, make changes in or additions to the drawings and specifications, issue additional instructions, require additional work within the general scope of the Task Orders issued under this contract or change the place of delivery, method of shipment, or the amount of Government-Furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of the Task Order, or otherwise affects any other provision of the Task Order, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid the contractor, and (iii) in such other provisions of the Task Order as may be so affected, and the Task Order shall be modified in writing accordingly. Any claim by the contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the contractor of the notification of change; Provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under the Task Order. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the Task Order as changed.

Notwithstanding the foregoing provisions of this clause, no additional work will be required which will necessitate an increase in facilities, or assigned personnel except by mutual agreement of the Contractor and the Contracting Officer.

### ARTICLE 4. LIMITATION OF COST.

(a) It is estimated that the total cost to the Government exclusive of any fixed fee, for the performance of any Task Order issued under this contract will not exceed the estimated cost set forth in such Task Order, and the Contractor agrees to use its best efforts to perform the work specified in each Task Order and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of any Task Order in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Task Order, or if at any time, the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of any Task Order will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of the Task Order.

- 2 -

RD TASK  
January 1956

**SECRET**

SECRET

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Task Order, and the Contractor shall not be obligated to continue performance under the Task Order or to incur costs in excess of the estimated cost set forth in the Task Order, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of the Task Order. When and to the extent that the estimated cost set forth in the Task Order has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

#### ARTICLE 5. ALLOWABLE COST, FIXED FEE, AND PAYMENT.

(a) For the performance of Task Orders issued under this contract, the Government shall pay to the Contractor the cost thereof determined by the Contracting Officer to be allowable in accordance with Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract and it is understood and agreed that the items stipulated on pages 31 through 46 of the Schedule of this contract shall be considered as allowable items of cost hereunder when properly allocable to this contract and incurred or paid by the Contractor in connection with this contract, plus such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute Allowable Cost. Each statement of cost shall be certified by an officer or other responsible official of the Contractor authorized by it to certify such statements.

(c) As promptly as may be practicable after receipt of each invoice or voucher and statement of cost, the Government shall, except as hereinafter provided and subject to the provisions of paragraph (d) below, make payment thereon as approved by the Contracting Officer. After payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, as from time to time amended, further payment on account of the fixed fee shall be withheld until a reserve of either (i) fifteen percent (15%) of the total fixed fee or (ii) \$100,000, whichever amount is less, shall have been set aside, such reserve or the balance thereof to be retained until the execution and delivery of a release by the Contractor as provided in paragraph (e) hereof.

(d) At any time or times prior to final payment under any Task Order of this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and statements of cost as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of

- 3 -

RD TASK  
July 1955

SECRET

**SECRET**

amounts included in the related invoice or voucher and statement of cost which are found by the Contracting Officer on the basis of such audit not to constitute Allowable Cost, and shall also be subject to reduction for overpayments or to increase for underpayments on preceding invoices or vouchers. On receipt of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and statement of cost, which shall be submitted by the Contractor as promptly as may be practicable following completion of the work under a Task Order but in no event later than one (1) year (or such longer period as the Contracting Officer, may, in his discretion, approve in writing) from the date of such completion, and following compliance by the Contractor with all provisions of this contract (including, without limitation, provisions relating to patents, royalties, and the provisions of paragraphs (e) and (f) of this clause), the Government shall as promptly as may be practicable pay any balance of Allowable Cost.

(e) The Contractor and each assignee, if any, under an assignment entered into under this contract and in effect at the time of final payment under any Task Order shall execute and deliver at the time of and as a condition precedent to final payment under the Task Order, a release discharging the Government, its officers, agents and employees of and from all liabilities, obligations, and claims arising out of or under such Task Order, subject only to the following exceptions:

- (1) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor.
- (2) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the Task Order, which are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.
- (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the contract relating to patents.

(f) The Contractor agrees that any refunds, rebates or credits (including any interest thereon) accruing to or received by the Contractor or any assignee which arise out of the performance of any Task Order and on account of which the Contractor has received reimbursement shall be paid by the Contractor to the Government. The Contractor and each assignee, if any, under an assignment

- 4 -

RD TASK  
July 1955

**SECRET**

**SECRET**

entered into under this contract and in effect at the time of final payment under any Task Order shall execute and deliver at the time of and as a condition precedent to final payment under the Task Order, an assignment to the Government of refunds, rebates or credits (including any interest thereon) arising out of the performance of the Task Order, in form and substance satisfactory to the Contracting Officer. Reasonable expenses incurred by the Contractor for the purpose of securing any such refunds, rebates or credits shall constitute Allowable Cost when approved by the Contracting Officer.

<sup>g</sup>  
(~~h~~) Any cost incurred by the Contractor under the terms of this contract which would constitute Allowable Cost under the provisions of this clause shall be included in determining the amount payable under the Task Order, notwithstanding any provisions contained in the specifications or other documents incorporated in the Task Order by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

<sup>h</sup>  
(i) Payment of the fixed fee shall be made to the Contractor as provided in the Schedule subject, however, to the withholding provisions of paragraph (c) hereof.

#### ARTICLE 5A. RECORDS.

(a) (1) The Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of the Contracting Officer; provided, however, that no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this contract are readily ascertainable therefrom.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by the Comptroller of the contracting Government Agency or his authorized representatives.

(3) In the event the Comptroller of the contracting Government Agency or his authorized representative determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after

**SECRET**

**Page Denied**

**SECRET**

have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only, excludes (i) purchase orders not exceeding \$1,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

#### ARTICLE 6 GOVERNMENT PROPERTY

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract,

- 7 -

RD TASK  
July 1955

**SECRET**

**SECRET**

shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished Property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Property."

(c) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall maintain adequate property control records of the Government Property and shall identify the Government Property as such in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation), as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.

(f) (i) The Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) (A) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (I) all or substantially all of the Contractor's business, or (II) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (III) a separate and complete major industrial operation in connection with the performance of this contract; or (B) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, (I) to maintain and administer, in accordance with sound industrial practice, the program for maintenance,

**SECRET**

RD TASK  
July 1955

**SECRET**

repair, protection and preservation of Government Property as required by paragraph (e) hereof, or (II) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof; or (C) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or (D) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or (E) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to Government Property in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(ii) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(iii) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of (A) the lost, destroyed and damaged Government Property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall make repairs and renovations of the damaged Government Property or take such other action, as the Contracting Officer directs.

- 9 -

RD TASK  
July 1955

**SECRET**

**SECRET**

(iv) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, it shall use the proceeds to repair, renovate or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government Property for the benefit of the Government.

(g) The Government shall at all reasonable times have access to the premises where any of the Government Property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract (including any resulting scrap), or not theretofore delivered to the Government, and shall deliver or make such other disposal of the Government Property as may be directed by the Contracting Officer. Recoverable scrap shall be reported in accordance with a procedure and in such form as the Contracting Officer may direct. The net proceeds of any such disposal approved by the Contracting Officer shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

- 10 -

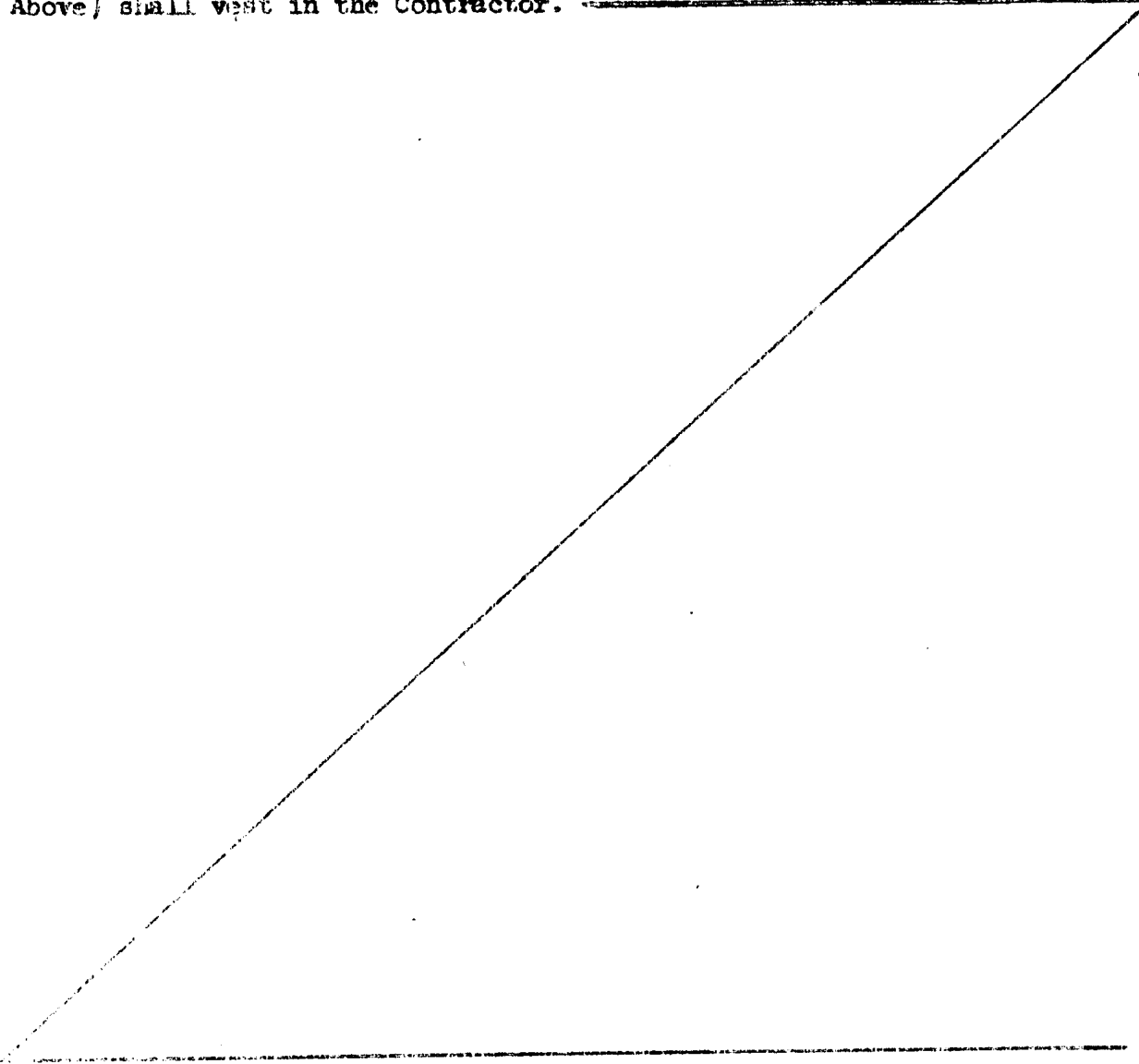
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RD TASK  
July 1955

**SECRET**

**SECRET**

(1) For the purpose of establishing a policy and clarifying the intent of the parties with respect to the disposition of scrap as referred to in the clause of this contract entitled "Government Property", it is understood and agreed that such scrap as is represented by ordinary manufacturing waste and scrap, including but without being limited to borings, turnings, short ends and pieces, punchings, skeletons and the like, need not be physically segregated from Contractor-owned scrap for accounting purposes, it being recognized that the Contractor's method of crediting the proceeds from the disposition of such scrap has been taken into consideration in establishing the estimated cost and fixed overhead rates under this contract. Therefore, the Contractor will not be required to render any other accountability for such scrap separately for this contract. Title to such scrap (as defined Above) shall vest in the Contractor.



- 10A -

RE TASK  
July 1955

(The next page is 11)

**SECRET**

SECRET

ARTICLE 7 INSURANCE-LIABILITY TO THIRD PERSONS

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance under this contract; provided, that the Contractor in fulfillment of its obligation to procure workmen's compensation insurance may, with the approval of the Contracting Officer and pursuant to statutory authority, maintain a self-insurance program. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) for the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupies or used by the Contractor or rented to the Contractor or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, its agents, servants or employees, provided such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer or (III) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of

- 11 -

RD TASK  
July 1955

SECRET

this clause, provided such cost would constitute Allowable Cost under the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment."

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith: Provided, however, That the Contractor may, at its own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

#### ARTICLE 8. SUPERSEDING SPECIFICATIONS.

All references in any Government specification incorporated herein to other Government specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referred to, to the extent that such supplementary or superseding specifications are in effect at the date of latest quotation, if the Contractor was furnished or otherwise notified of the existence of such supplementary or superseding specification at the time of said quotation.

25X1

#### ARTICLE 9. SHIPMENTS.

(a) Mode of Shipment. Unless otherwise provided in this contract or unless the Contracting Officer, acting under the "Changes" clause hereof, directs in writing otherwise, all supplies to be furnished under this contract shall be delivered to the Government f.o.b. destination at which such supplies are to be finally inspected.

(b) F. O. B. Destination. Whenever it is provided in this contract that supplies shall be delivered f.o.b. specified destinations, such supplies shall be shipped direct by the Contractor to the specified destinations on commercial bills of lading.

(c) Shipping Instructions. If not otherwise provided herein, names of consignees of all supplies to be delivered by the Contractor hereunder will be furnished to the Contractor in writing by the Contracting Officer at a later date. Request therefor shall be made to the Contracting Officer not later than thirty (30) days prior to the date on which any of the articles are ready for shipment.

**ARTICLE 10. DELAY IN DELIVERY OF DATA.**

(a) It is understood that the efficient use by the Government of the supplies called for hereunder requires that the data called for hereunder be delivered not later than the time or respective times herein specified. If such data are not delivered at said time or times, the Government may at its election, so long as such data remains undelivered, unless the delay in delivery thereof arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Default," withhold payment to the Contractor for any of the amounts then due, refuse approval of the Contractor's vouchers and refuse to accept further deliveries hereunder from the Contractor or take any other action authorized by law or regulation now or hereafter in effect including termination of the contract for default to the extent and in the manner authorized by said clause, and may take any or all of the foregoing actions separately or in combination. Notwithstanding the foregoing provisions, the sum of the amounts withheld and vouchers refused by reason of the foregoing shall not exceed five percent (5%) of the estimated cost of the Task Order involved.

(b) The provisions of this clause shall only be applicable to technical data, such as handbooks, service manuals, or other information necessary for the proper maintenance or servicing of the end items called for herein.

**ARTICLE 11. INSPECTION AND CORRECTION OF DEFECTS.**

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable at all reasonable times and places including the period of performance, and in any event prior to final acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premise of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and test by the Government shall be performed in such a manner as will not unduly delay the work. Final inspection and acceptance by the Government shall be made as promptly as practicable after delivery. The time and place of delivery, final inspection, and acceptance shall be set forth in the schedule.

(b) The Contractor warrants that the services rendered in the performance of this contract will conform to the requirements of this contract and to high professional standards in the field, and that any article delivered to the Government under this contract will conform to the requirements of this contract and will not be defective in material or workmanship.

- 13 -

RD TASK  
July 1955

**SECRET**

**SECRET**

(c) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the schedule) after final acceptance, the Government may require the Contractor to remedy by correction or replacement as directed by the Contracting Officer, any failure by the Contractor to comply with its obligations under paragraph (b) hereof. Except as otherwise provided in paragraph (d) hereof, the cost of any such replacement or correction shall be included in "Allowable Cost" determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances; or (ii) in the case of articles not delivered, may require the delivery of such articles, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances; or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree on the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(d) Notwithstanding the provisions of paragraph (c) hereof, the Government may at any time require the contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with its obligations under paragraph (b) hereof, if such failure is due to fraud, lack of good faith, or willful misconduct on the part of any of the contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business; or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or (iii) a separate and complete major industrial operation in connection with the performance on this contract. Fraud, lack of good faith, or willful misconduct on the part of any of such supervisory personnel shall be deemed to include the selection of individual employees or the retention of employees after any of such supervisory personnel has reason to believe that such employees are habitually careless or otherwise unqualified.

(e) Corrected articles tendered as replacements shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

- 14 -

RD TASK  
July 1955

**SECRET**

**SECRET**

(f) The contractor shall make its records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(g) Except as otherwise provided in the schedule, the contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

#### ARTICLE 12 SUBCONTRACTS

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost or cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time-and-material or labor-hour basis or (v) involves research and development work. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(e) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

- 15 -

RD TASK  
July 1955

**SECRET**

**SECRET**

(f) The Contracting Officer may approve all or any part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (b) above.

#### ARTICLE 13 UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the Government as declared by the Congress to bring about the greatest utilization of small business concerns which is consistent with efficient production.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

#### ARTICLE 14 NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this contract is in excess of \$5,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of litigation against the Government on account of any claim of patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such litigation. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

#### ARTICLE 15 AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any patented invention in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

#### ARTICLE 16 FILING OF PATENT APPLICATIONS

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U. S. Code 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and

- 16 -

**SECRET**

RD TASK  
July 1955

**SECRET**

the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U. S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should otherwise be delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

#### ARTICLE 17 PATENT RIGHTS

(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "Subject Invention" means any invention improvement or discovery (whether or not patentable) conceived or first actually reduced to practice either (A) in the performance of the experimental, developmental, or research work called for or required under this contract, or (B) in the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded; provided that the term "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause.

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts are set forth in paragraphs (g), (h), and (i) of this clause) who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

- 17 -

RD TASK  
July 1955

**SECRET**

SECRET

(b) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government throughout the world, each Subject Invention in the manufacture, use and disposition according to law, of any article or material, and in the use of any method; provided, however, that with respect to (i) any Subject Invention made by other than Technical Personnel, (ii) any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in paragraph (a) (i) above, and (iii) the practice of any Subject Invention in foreign countries, the obligation of the Contractor to grant the aforesaid license and the other rights hereinafter provided in this clause shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. No license granted herein shall convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields. Nothing contained in this paragraph shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall:

(i) Make a written disclosure to the Contracting Officer promptly after conception or first actual reduction to practice of each Subject Invention which reasonably appears to be patentable;

(ii) Certify to the Contracting Officer not less often than every twelve months, commencing with the date of this contract, whether or not any Subject Inventions were conceived or first actually reduced to practice during the preceding twelve months; and

(iii) Prior to final settlement of this contract, make a summary report of all those Subject Inventions previously disclosed and of those Subject Inventions conceived or first actually reduced to practice after the last certification but prior to the summary report.

(d) The Contractor shall also, in connection with each Subject Invention referred to in paragraph (c) (i) above;

(i) Specify, at the time of making written disclosure, whether or not a United States patent application claiming such Invention has been or will be filed by or on behalf of the Contractor. If the Contractor specifies that a United States patent application will be filed claiming such Invention, the Contractor shall file or cause to be filed such application in due form and time. If the Contractor decides not to file or cause to be filed said application after having specified that it would file, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale;

- 18 -

RD TASK  
July 1955

SECRET

**SECRET**

(ii) In the event the Contractor specifies that it has not filed and will not file (or having specified that it will file, thereafter notifies the Contracting Officer to the contrary), (A) inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication, and (B) convey to the Government the Contractor's entire right, title and interest in such Invention by delivering to the Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment, application and other papers as are deemed necessary to vest in the Government the Contractor's right, title and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the right reserved to the Contractor in paragraph (e) to file foreign applications, and subject further to the reservation of a nonexclusive and royalty-free license to the Contractor (and to its existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains;

(iii) Furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any Subject Invention;

(iv) In the event the Contractor, or those deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title and interest in the Subject Invention and the application, subject to the reservations as specified in (ii) above; and

(v) Deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

- 19 -

RD TASK  
July 1955

**SECRET**

**SECRET**

(e) The Contractor, or those deriving rights from the Contractor, shall have the right to file applications on Subject Inventions in each foreign country within (i) nine months from the date a corresponding United States application is filed, or (ii) six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons, or (iii) such longer period as may be approved by the Contracting Officer. The Contractor shall, upon written request of the Contracting Officer, convey to the Government the Contractor's entire right, title and interest in each Subject Invention in each foreign country in which a foreign application has not been filed within the time above specified, subject to the limitations of paragraph (b)(iii) above and to the reservation of a nonexclusive and royalty-free license to the Contractor (and to its existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) together with the right of the Contractor to grant sublicenses to existing and future licensees, which license shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer the certificates required by paragraph (c) (ii) of this clause or fails to furnish the written disclosures for all Subject Inventions required by paragraph (c) (i) of this clause shown to be due in accordance with any certificate delivered under paragraph (c) (ii), there shall be withheld from payment until the Contractor shall have corrected such failures either (i) ten percent (10%) of the amount of this contract, as from time to time amended, or (ii) \$5,000, whichever is less. After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either (i) ten percent (10%) of such amount, or (ii) \$5,000, whichever amount is less, shall have been set aside,

- 20 -

RD TASK  
July 1955

**SECRET**

**SECRET**

such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer (A) the summary report required by paragraph (c) (iii) of this clause, (B) written disclosures for all Subject Inventions required by paragraph (c) (i) of this clause which are shown to be due in accordance with certificates delivered under paragraph (c) (ii) or in accordance with such summary report, and (C) the information as to any subcontractor required by paragraph (h) of this clause. The maximum amount which may be withheld under this paragraph shall not exceed ten percent (10%) of the amount of this contract or \$5,000, whichever is less, and no amount shall be withheld under this paragraph when the minimum amount specified by this paragraph is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) The Contractor shall exert all reasonable effort to negotiate for the inclusion of this Patent Rights clause in any subcontract hereunder of \$3,000 or more having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept the Patent Rights clause, the Contractor shall not proceed with the subcontract without written authorization of the Contracting Officer, and upon obtaining such authorization, shall cooperate with the Government in the negotiation with such subcontractor of an acceptable patent rights clause; provided, however, that the Contractor shall in any event require the subcontractor to grant to the Government patent rights under Subject Inventions of no less scope and on no less favorable terms than those which the Contractor has under such subcontracts, except that in no event shall the subcontractor be required to grant to the Government patent rights in excess of those herein agreed to be granted to the Government by the Contractor.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing a patent rights clause, furnish the Contracting Officer a copy of such clause, and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to such subcontract clause, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to Subject Inventions.

(i) When the Contractor shows that it has been delayed in the performance of this contract by reason of its inability to obtain in accordance with paragraph (g) a suitable patent rights clause from a qualified sub-

- 21 -

RD TASK  
July 1955

**SECRET**

contractor for any item or service required under this contract for which the Contractor itself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay; and, upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates and an increase in contract prices based upon additional costs incurred by such delay are proper under the circumstances; and the contract shall be modified accordingly. If the Contractor, after exerting all reasonable effort, is unable to obtain a qualified subcontractor as set forth above, the Contractor may submit to the Contracting Officer a written request for waiver or modification of the requirement that a suitable patent rights clause be included in the subcontract. Such request shall specifically state that the Contractor has used all reasonable effort to obtain such qualified subcontractor, and shall cite the waiver or termination provision hereinafter set forth. If, within thirty-five (35) days after the date of receipt of such request for a waiver or modification of said requirement, the Contracting Officer shall fail to deny in writing such request, the requirement shall be deemed to have been waived by the Government. If within such period the Contractor shall receive a written denial of such request by the Contracting Officer, this contract shall thereupon automatically terminate and the rights and obligations of the parties shall be governed by the provisions of the clause of this contract entitled "Termination for the Convenience of the Government."

#### ARTICLE 18. REPRODUCTION AND USE OF TECHNICAL DATA.

The Contractor agrees to and does hereby grant to the Government, to the full extent of the Contractor's right to do so without payment of compensation to others, the right to reproduce, use, and disclose for governmental purposes (including the right to give to foreign governments for their use as the national interest of the United States may demand) all or any part of the reports, drawings, blueprints, data, and technical information specified to be delivered by the Contractor to the Government under this contract; provided, however, that nothing contained in this paragraph shall be deemed, directly or by implication, to grant any license under any patent now or hereafter issued or to grant any right to reproduce anything else called for by this contract and provided further, that the Government agrees, notwithstanding any other provision of this contract to the contrary, not to duplicate, use or disclose for manufacture (except for emergency repair) or procurement, or to disclose to anyone other than members of the Contracting Agency without the written permission of the Contractor, any of the Contractor's proprietary information. For the purpose of this clause, Contractor's proprietary information is defined as background information peculiarly within the knowledge of the Contractor, which is not first produced in the performance of this contract, and is contained in reports, drawings, blueprints, data delivered by the Contractor to the Government under this contract, but does not include information which is (1) within public knowledge, (2) lawfully obtainable from sources other than the Contractor, (3) in the possession of the Government prior to the date of receiving it from the Contractor, or (4) not identified by the Contractor in the manner subsequently defined. However, the Government may release such proprietary information without the written

permission of the Contractor, to foreign governments solely for their operational and maintenance use on equipment furnished them by the Government under the Mutual Defense Assistance Program.

The Contractor shall, where he desires to so limit the use and disclosure of proprietary information data, place the following legend upon any document delivered by the Contractor to the Government containing such data:

"This document is furnished under U. S. Government Contract No. ED-107 T.O. and contains technical data which is the property of [redacted] 25X1

[redacted] This document and/or the information contained therein shall not be duplicated, used or disclosed in whole or in part for the manufacture (except for emergency repair) or procurement of any item or items shown 25X1

hereon or thereby, nor be published for distribution outside the Contracting Agency without the written permission of [redacted] 25X1

This legend shall be included on any duplication hereof in whole or in part." "Upon written notice from the Contractor that the restrictive legend has been inadvertently omitted from any document supplied under the contract, the Government shall use all reasonable efforts to add this legend to the document unless the Government has already released this document outside the Contracting Agency."

#### ARTICLE 19. REPORTING OF ROYALTIES.

The provisions of this clause shall be applicable only if the amount of the contract is in excess of \$10,000.

(a) The Contractor shall report in writing (in quadruplicate) to the Contracting Officer as soon as practicable after execution of this contract whether or not any royalties in excess of \$250 have been paid or are to be paid by the Contractor directly to any person or firm in connection with the performance of this contract. If royalties in excess of \$250 have been paid or are to be paid to any person or firm, the report shall include the following items of information with respect to such royalties (including the initial \$250):

- 22A -

(The next page is 23)

ED 106K  
July 1955

**SECRET**

**SECRET**

(1) The name and address of each licensor to whom royalties in excess of \$250 have been paid or are to be paid,

(2) The patent numbers, patent application serial numbers (with filing dates), or other identification of the basis for such royalties,

(3) The manner of computing the royalties consisting of (i) a brief identification of each royalty-bearing unit or process, (ii) the total amount of royalties, and (iii) the percentage rate or dollars and cents amount of royalties on each such unit or process; provided that if the royalties cannot be computed in terms of units or dollars and cents value, then other data showing the manner in which the Contractor computes the royalties.

(b) In lieu of furnishing a report under paragraph (a), the Contractor may furnish a single, consolidated report for each accounting period of the Contractor during which the Contractor has contracts with the Government, provided the Contractor has requested and obtained the prior written approval of the Contracting Officer. Such consolidated report shall be furnished, when the furnishing thereof has been approved, in the number of copies as approved, as soon as practicable after the close of the accounting period covered by the report. Such consolidated report shall be made in accordance with Contractor's established accounting practice and shall include, for the accounting period, the total amount of royalties accruing to each licensor at a rate in excess of \$1,000 per annum on the Contractor's over-all business, together with (i) the name and address of each such licensor, (ii) the patent numbers, patent application serial numbers (with filing dates), or other identification of the basis for such royalties, (iii) a brief description of the subject matter of the license under which royalties are charged, (iv) the percentage rate or unit amount, or if the royalties do not accrue by rate or unit amount, such other data showing the manner by which the royalties accrue to licensor, and (v) an estimate or approximation (without detailed accounting) of the portion of such royalties that may be attributable to Government contracts. The Contractor shall, if requested by the Government, furnish at Government expense a more detailed allocation of such royalty payments attributable to Government contracts.

(c) In the event that the Contractor requests written approval to furnish consolidated reports under paragraph (b) above, the Contracting Officer shall promptly consider the request and furnish to the Contractor a letter stating whether or not the request is approved and, notwithstanding any such approval, the Contracting Officer shall have the right to question any such subsequently furnished report as to accuracy or completeness of data and to ask for additional information. The Contractor shall furnish a copy of such letter of approval to the Contracting Officer administering this contract.

- 23 -

RD TASK  
July 1955

**SECRET**

**SECRET**

(d) After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, further payment shall be withheld until a reserve of either (i) ten percent (10%) of such amount or (ii) \$5,000, which ever is less, shall have been set aside, such reserve or the balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer the report called for by paragraph (a) hereof or the copy of the letter approving the Contractor's request to furnish the report under paragraph (b); provided that no amount shall continue to be withheld from payment for the causes specified in this paragraph (d) if the Contracting Officer shall find that the Contractor has not been furnished a letter as required by paragraph (c) within a reasonable time after making written request to submit a single, consolidated report under the provisions of paragraph (b) of this clause; and provided further that the Contracting Officer may, in his discretion, order payment to be withheld in the amount and manner above provided if the report called for by paragraph (a) is unsatisfactory or if the report called for by paragraph (b) is due but has not been received, or if received, is found to be unsatisfactory. No amount shall be withheld under this paragraph when the minimum amount specified by this paragraph is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any right accruing to the Government under this contract.

#### ARTICLE 20 SECURITY

(a) Disclosure of Information. It is understood that disclosure of information relating to the work contracted for hereunder, to any person not entitled to receive it, or failure to safeguard all secret, confidential, and restricted matter that may come to the Contractor or any person under his control in connection with the work under this contract, may subject the Contractor, his agents, employees and subcontractors to criminal liability under the laws of the United States (Act of 25 June 1948, c.645, 62 Stat. 736 as amended). The provisions of the "Security Requirements for Contractors" and of the "Contractor's Security Agreement", copies of which have been furnished to the Contractor, are incorporated herein by reference.

(b) Subcontractors. The Contractor when it is deemed necessary to disclose classified information to a subcontractor to accomplish the purposes of this contract, will request permission of the Contracting Officer prior to such disclosure. Upon the granting of permission, the Contractor shall cause to be inserted in all subcontracts under this contract a provision similar to (a) above.

#### ARTICLE 21 DISPUTES

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contract-

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ing Officer a written appeal addressed to the Director, and the decision of the Director or his duly authorized representative for the hearing of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence, be final and conclusive; provided that, if no such appeal is taken, the decision of the contracting officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

#### ARTICLE 22 COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

#### ARTICLE 23 EIGHT-HOUR LAW

This contract, to the extent that is of a character specified in the Eight-Hour Law of 1912 as amended (40 U. S. Code 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912 as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of the said work, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every such laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed upon the Contractor for each such laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause; and all penalties thus imposed shall be withheld for the use and benefit of the Government.

- 25 -

RD TASK  
January 1956

**SECRET**

**SECRET****ARTICLE 24 WALSH-HEALEY PUBLIC CONTRACTS ACT**

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act as amended (41 U. S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

**ARTICLE 25 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES**

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

**ARTICLE 26 NONDISCRIMINATION IN EMPLOYMENT**

(a) In connection with the performance of work under this contract the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

**ARTICLE 27 CONVICT LABOR**

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

**ARTICLE 28 OFFICIALS NOT TO BENEFIT**

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

- 26 -

RD TASK  
July 1955

**SECRET**

~~SECRET~~ARTICLE 29 BUY AMERICAN

The Contractor agrees that there will be delivered under this contract only such unmanufactured articles, materials and supplies (which term "articles, materials and supplies" is hereinafter referred to in this clause as "supplies") as have been mined or produced in the United States, and only such manufactured supplies as have been manufactured in the United States substantially all from supplies mined, produced, or manufactured, as the case may be, in the United States. Pursuant to the Buy American Act (41 U. S. Code 10a-d), the foregoing provision shall not apply (i) with respect to supplies excepted by the Director from the application of that Act, (ii) with respect to supplies for use outside the United States, or (iii) with respect to the supplies to be delivered under this contract which are of a class or kind determined by the Director or his duly authorized representative not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (iv) with respect to such supplies, from which the supplies to be delivered under this contract are manufactured, as are of a class or kind determined by the Director or his duly authorized representative not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, provided that this exception (iv) shall not permit delivery of supplies manufactured outside the United States if such supplies are manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

ARTICLE 30 EXCUSABLE DELAYS

(a) The Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes include, but are not restricted to: acts of God or of the public enemy; acts of the Government; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; unusually severe weather; and failure of subcontractors to perform or make progress due to such causes, unless the Contracting Officer shall have determined that the supplies or services to be furnished under the subcontract were obtainable from other sources and shall have ordered the Contractor in writing to procure such services or supplies from such other sources, and the Contractor shall have failed reasonably to comply with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that such failure was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly subject to the rights of the Government under the clause hereof entitled "Termination".

- 27 -

RD TASK  
January 1956

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(b) If the Contractor becomes unable to complete the contract work and make delivery at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, it may give the Contracting Officer written notice of the anticipated default with reasons therefor. Such notice and reasons shall be delivered not less than forty-five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. If such notice is duly given, then to the extent the interest of the Government makes an extension desirable the Contracting Officer may, in his discretion, extend the period of time specified in the Schedule for such period as he deems advisable, and this contract shall then be modified in writing accordingly.

#### ARTICLE 31. ASSIGNMENT OF RIGHTS.

No assignment of any of the Contractor's rights under this contract may be made.

#### ARTICLE 32. EMPLOYMENT OF ALIENS.

If any Task Order calls for furnishing or constructing aircraft, aircraft parts, or aeronautical accessories no aliens employed by the Contractor shall be permitted to have access to the plans or specifications, or the work under construction, or to participate in the contract trials, without the written consent beforehand of the Director or his duly authorized representative.

#### ARTICLE 33. COPYRIGHTS.

(a) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents and employees acting within the scope of their official duties, (i) a royalty-free, nonexclusive and irrevocable license subject to the limitations imposed by the modifications of Article 18 "Reproduction and Use of Technical Data" to reproduce, translate, publish, use, and dispose of, and to authorize others so to do, all copyrightable material first produced or composed and delivered to the Government under this contract by the Contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and (ii) a license as aforesaid under any and all copyrighted and copyrightable work not first produced or composed by the Contractor in the performance of this contract but which is incorporated in the material furnished under the contract, provided that such license shall be only to the extent the Contractor now has, or prior to completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(b) The Contractor agrees that it will exert all reasonable effort to advise the Contracting Officer, at the time of delivering any copyrightable or copyrighted work furnished under this contract, of any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

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(c) The Contractor agrees to report to the Contracting Officer, promptly and in reasonable written detail, any notice or claim of copyright infringement received by the Contractor with respect to any material delivered under this contract.

#### ARTICLE 34 GRATUITIES

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Director or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; PROVIDED, That the existence of the facts upon which the Director or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Director or his duly authorized representative) which shall be not less than 3 nor more than 10 times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### ARTICLE 35 TERMINATION

The performance of work under this contract may be terminated by the Government in whole or from time to time in part by giving the Contractor notice in writing. Upon receipt of such notice from the Government, the Contractor shall exercise all reasonable diligence to obtain the cancellation of its outstanding commitments hereunder running beyond such termination date, but may be reimbursed for reasonable termination charges in conformance with the standards established in APPENDIX I, entitled "Termination," which is hereby made a part of this agreement by reference and attachment hereto.

- 29 -

RD TASK  
July 1955

**SECRET**

**SECRET**

Contract No. RD-107

**ARTICLE 36. ADDITIONS.**

The following articles and reference to the Schedule were added and made a part of this contract prior to signature by either party:

**ARTICLE 37. REPRODUCTION RIGHTS.**

It is understood and agreed that the Contractor does not convey to the Government any reproduction rights in or to the articles and/or spare parts called for herein by virtue of the terms of this contract unless herein otherwise specifically provided.

**ARTICLE 38. DURATION OF CONTRACT.**

This contract shall remain in effect until December 31, 1957, or until such later date as may be authorized by the Contracting Officer and agreed to by the Contractor and shall be applicable exclusively to research and development Task Orders placed on the Contractor during the period of this contract; provided that it may be terminated by either party on written notice delivered thirty (30) days in advance of the effective date of such termination. This provision shall not diminish the Government's right to terminate any or all of the Task Orders in accordance with the provisions of Appendix I entitled "Termination" nor shall it operate to terminate the performance of any Task Order accepted by the Contractor prior to the expiration of this contract or any extension thereof. No other unilateral action by either party shall alter this agreement or alter its applicability to any contract wherein this agreement has been incorporated.

**ARTICLE 39. REAL PROPERTY ACQUISITION, CONSTRUCTION, ALTERATION AND RESTORATION.**

(a) No action shall be initiated under this contract in connection with (i) the purchase, rental, or other acquisition of real property, (ii) the construction or alteration of any building or other type of real property, or (iii) the construction of facilities, until such action has been authorized by the appropriate authority and written notification of such authorization has been transmitted to the Contractor by the Contracting Officer.

(b) At the election of the Contracting Officer, any property installed or constructed on land not owned or controlled by the Government may at any time be abandoned in place, and upon written notice to the Contractor by the Contracting Officer of such abandonment, all right, title, and interest of the Government therein and all obligations of the Government with respect thereto shall cease.

(c) The Government shall not be under any duty or obligation to restore or rehabilitate or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government property, except as may be specifically provided in connection with any authorization granted under subparagraph (a) of this clause and reflected in the contract or in an amendment thereto, or as otherwise approved in writing by the Contracting Officer.

**SCHEDULE.** The Schedule referenced throughout this contract is attached hereto and made a part hereof and consists of page numbers 31 through 46.

**SECRET**

**SECRET**

Contract No. RD-107

SCHEDULE

Each article in this schedule has been numbered to correspond with the article in the contract which it implements.

**ARTICLE 2. SCOPE OF SUBJECT WORK.** The work to be performed under this contract shall be set forth in Task Orders as issued from time to time and said Task Orders shall be for work and services for which the Contractor has submitted proposals. Unless within 14 days after receipt of a task order which conforms completely with the Contractor's proposal, the Contractor rejects for reasonable causes a task order and notifies the Contracting Officer, the Contractor shall proceed with performance of the Task Order. In the event a task order is found by the Contractor to not be in conformance with the proposal, the Contractor will notify the Contracting Officer of this fact within 14 days after receipt. Priority ratings among the task orders, when necessary, will be established and/or revised by mutual agreement in accordance with the best interests of the Government.

**ARTICLE 4. LIMITATION OF COST.** The estimated cost of the performance of any Task Order issued hereunder exclusive of any fixed fee will be set forth in the said Task Order.

**ARTICLE 5. ALLOWABLE COST, FIXED FEE, AND PAYMENT.**

- (a) The fixed fee applicable to each Task Order issued hereunder shall be computed at eight percent (8%) of the estimated cost authorized by the said Task Order and shall be stated therein. No additional fixed fee in excess of the amount initially established in the Task Order shall be paid the Contractor unless authorized by a written supplement to the Task Order increasing the scope of performance and the amount of the fixed fee to be paid thereunder. For the purpose of accomplishing progress payments on the fixed fee, each billing for allowable costs including overhead and general and administrative expenses shall have added thereto a sum equal to eight percent (8%) of the amount billed subject to the provisions of Article 5 (c) of the contract.
- (b) In determining the cost of performing the Task Orders pursuant to the provisions of Article 5 (a) of the contract, it is understood and agreed without limiting the generality of Part 2, Section XV, Armed Services Procurement Regulation that the following shall be considered as allowable items of cost hereunder when properly allocable to this contract and incurred or paid by the Contractor in connection with this contract:
  - (1) All materials and supplies (including tools, dies, patterns, molds, jigs, fixtures, gauges, and special purpose machinery and

**SECRET**

**SECRET**

Contract No. RD-107

equipment) acquired or produced by the Contractor for use in the performance of the work under this contract. These shall include materials and supplies directly chargeable to the maintenance, repair or replacement of machinery, tools, equipment, dies, molds, jigs, gauges, patterns and fixtures which are or which are to become the property of the Government and to be used in the performance of the work provided for under this contract, and materials, and supplies directly chargeable to alterations, rearrangement, installation or removal of equipment, and shall also include materials and supplies purchased for stock and subsequently issued for operations under this contract and those produced or acquired for the purposes of this contract and subsequently scrapped for any reason, subject to the provisions of the clause hereof entitled "Government Property", as well as waste resulting from operations under this contract. In connection with the work under this contract, the Contractor shall be free but not obligated to use any commercial articles customarily produced or assembled by the Contractor in the regular course of its business, provided that such articles are billed at a price approved by the Contracting Officer and the Contractor hereby agrees that the said prices shall be the lowest prices extended to commercial customers, less its applicable inter-company discount.

(2) All labor, usually termed 'shop labor', properly chargeable directly to this contract, including traveling time and that directly applicable to inspections, tests, or demonstrations in the Contractor's plant and that directly applicable to packing, crating, boxing, shipment, loading, unloading, dismantling, moving and removing materials, supplies and equipment, but not including labor covered by subparagraphs (3), (4), (5) or (6) below. Vacation, holiday, sick, personal or military, jury or election duty compensation and premium portion of overtime and shift premium charges will not be a direct charge.

(3) All engineering labor, including all compensation of engineers, scientists, physicists, chemists, draftsmen, technicians and other salaried employees, other than employees coming within subparagraph (5) below, chargeable directly and properly to this contract, including travel time but excepting vacation, holiday, sick, personal or military, jury or election duty compensation and premium portion of overtime and shift premium charges will not be a direct charge. In case the full working time of any such employee is not applied to the work called for by this contract his compensation shall be included under this subparagraph only in proportion to the actual time applied thereto.

(4) All labor performed under this contract in regularly

**SECRET**

**SECRET**

Contract No. RD-107

established tool rooms of the Contractor and all labor chargeable to the cost of constructing, maintaining or replacing machinery, tools, equipment dies, molds, jigs, gauges, patterns and fixtures which are to be used in the production of items in quantity in connection with the work provided for under this contract and which are the property of or which are to become the property of the Government. All labor directly applicable to inspection, test or demonstration outside of the Contractor's plant or applicable to any work incident to such outside inspection, test or demonstration in connection with the work provided for under this contract shall be considered to come within the scope of this subparagraph. However, no labor performed by employees coming within subparagraph (5) below will be considered to come within the scope of this subparagraph. Vacation, holiday, sick, personal or military, jury or election duty compensation and premium portion of overtime and shift premium charges will not be a direct charge.

(5) All labor performed by employees of the Contractor's Research Laboratory and of the Contractor's [redacted] including travel time, directly and properly chargeable to the work provided for under this contract, excepting holiday, vacation, sick, personal or military, jury or election duty compensation and premium portion of overtime and shift premium charges. 25X1 25X1

(6) To the extent not reimbursable under any facilities contract between the Contractor and the Government and subject to the approval of the Contracting Officer, all labor directly applicable to plant alterations or to rearrangements of plant or facilities or to the installations of equipment or facilities in connection with the work provided for under this contract. No labor coming within subparagraph (3) above will be considered to come within the scope of this subparagraph. Vacation, holiday, sick, personal or military, jury or election duty compensation and premium portion of overtime and shift premium charges will not be a direct charge.

(7) a. There shall be added to the amount of all expenditures for which reimbursement is authorized and paid to the Contractor in accordance with the provisions of subparagraphs (2), (3), (4), (5) and (6) above, certain sums equal to the application of the percentages set forth on pages 40 through 46 in this schedule to the extent that the amount of any such expenditures represents the time of employees of the Department or Division of the Contractor indicated. The rates appearing on pages 40 through 46 are provided for the period subsequent to December 31, 1955. Fixed rates for 1956 contracts shall be negotiated and agreed upon in writing between the Contractor and the Department of Defense in accordance with paragraph c below entitled "Redetermination of Contract Rates". Paragraphs (d), (e), (f), (g), (h), and (i) below are extracted from the Department of Defense contracts regarding overhead rates and are for informational purposes only. The Contractor shall

**SECRET**

**SECRET**

Contract No. RD-107

promptly notify the Contracting Officer hereunder of the overhead rates negotiated with the Department of Defense and applicable to the type of work being performed under this contract. Said notification shall be accompanied with the following certification:

"I certify that no item of cost claimed as a direct charge under terms of this contract has been included as an element of expense in establishing the overhead rate(s)."

The overhead rates negotiated by the Department of Defense for successive periods will be set forth in a Change Order to this contract.

b. Fixed Overhead Rates. It has been determined by the Contracting Officer in advance, and agreed to by the contracting parties for the purpose of simplifying auditing procedures applicable hereto, that the overhead rates set forth on pages 40 through 46 of this schedule reasonably reflect the overhead costs properly allocable to the period 1 April 1955 to 31 December 1955, and as excluding any expenditures or items of cost for which direct reimbursement is provided elsewhere in this contract. Unless the prior approval of the Contracting Officer is obtained, the Contractor shall not change its method of accounting under this contract in such manner as to account for any item of cost on a direct-cost basis if such item of cost was considered as an indirect charge for the purpose of establishing the overhead rates set forth in the Schedule.

c. Redetermination of Overhead Rates. (a) The overhead rates set forth on pages 40 through 46 of this Schedule may be increased or decreased in accordance with this subparagraph c.

(b) Overhead Periods. The Government and the Contractor agree to revise the fixed overhead rate under this contract periodically in accordance with this subparagraph and agree that the performance of this contract will be divided into successive periods as set forth in the Schedule. The first period will extend from the date set forth in the Schedule. The first day of the second period, and each subsequent period, is hereinafter referred to as the 'effective date of the overhead rate revision.'

(c) Within sixty (60) days after the end of the Contractor's accounting period for which data is required, or at such later time or times as the

**SECRET**

**SECRET**

Contract No. RD-107

Contracting Officer may fix, the Contractor shall submit (i) a new estimate and breakdown of the overhead rate or rates proposed for the then current period; (ii) an explanation of the differences between the overhead rate or rates for the preceding period and the new estimate; (iii) such relevant data, cost records, reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced overhead costs hereunder to the extent that they are obtainable at the time or times of the negotiation of the revision of the overhead rates; (v) any other relevant data usually furnished in the case of negotiation of an overhead rate to the extent available.

(d) Upon filing of the statements and data required by subparagraph c. (c) above, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon the overhead rate to be applicable for the period during which the statements and data were required to be filed. Each such revision of the overhead rates shall be fair and reasonable in the circumstances and shall be evidenced by a supplemental agreement hereto.

(e) Disagreements. If within ninety (90) days after the time specified for filing of data (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to a revised overhead rate for the period in question, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the clause hereof entitled "Disputes".

(f) Payments. Until a new overhead rate shall become effective in accordance with this subparagraph c., the overhead rate in force immediately prior to the effective date of the overhead rate revision shall be applicable, subject to appropriate later revision made pursuant to paragraph (d) or (e) or (h) (2) (B) of this subparagraph c.

(g) Provisional Rate. If the overhead rate set forth in the Schedule is there termed a provisional rate, the parties shall negotiate and fix an overhead rate

**SECRET**

**SECRET**

Contract No. RD-107

on or before the date set forth in the Schedule for such determination. The agreed fixed rate will be evidenced by a supplemental agreement to the contract and will be retroactive to the inception of the contract. Any adjustment in payments made necessary by the use of the provisional rate shall be effected upon the first payment made subsequent to the issuance of said supplemental agreement.

(h) Termination Provisions. For any of the purposes of the clause hereof entitled 'Termination', the fixed overhead rate or allowance shall be deemed to be:

(1) For expenditures made prior to the effective date of the overhead rate revision, the fixed overhead rate (giving effect to any prior revisions under this subparagraph c.) applicable to such expenditures;

(2) For all expenditures made on or after the effective date of the overhead rate revision,

(A) The overhead rate as revised in accordance with this subparagraph c. if such revision shall have been agreed upon;

(B) If such revision shall not have been agreed upon, then such overhead rate as the Contractor and the Contracting Officer may agree upon as reasonable under all the circumstances, and in the absence of such agreement such reasonable overhead rate as may be determined in accordance with the clause hereof entitled 'Disputes'.

(i) The Contractor shall not be paid any overhead for work performed on any sites (divisions, departments, burden centers, etc.), other than at fixed overhead rates which have been specifically set forth herein, without the approval of the Contracting Officer. After such approval the parties agree to negotiate promptly such additional fixed overhead rates as may be required, and such additional rates shall be evidenced by a supplemental agreement hereto, and shall thereafter be subject to the provisions hereinabove set forth.

d. The overhead rates specified in this contract include provision for the cost of the normal insurance coverages regularly carried by the Contractor but do not include provision for additional insurance as may be required or approved by the Contracting Officer in connection with contract performance. Included in such overhead rates are items of cost contemplating coverage of liabilities as follows:

**SECRET**

**SECRET**

Contract No. RD-107

**Workmen's Compensation:**

- (i) Unlimited coverage at locations where Contractor is not self-insured.
- (ii) Coverage to a limit of \$1,650,000 for each loss at locations where the Contractor is self-insured, the first \$150,000 of each such loss being assumed by the Contractor as a self-insurer and the remaining \$1,500,000 being covered by excess insurance.

**Comprehensive General Liability (excluding Products) -**

Bodily injury \$100,000/\$500,000 - Property damage \$100,000 per accident.

**Comprehensive Automobile Liability -**

Bodily injury \$100,000/\$500,000 - Property damage \$100,000 per accident.

g. For purposes of negotiations of overhead rates under this paragraph, a proper and reasonable share of general research and development costs may be included as an allowable expense.

f. Option to Terminate Fixed Overhead Rates. (i) Either party to this contract shall have the option to terminate the operation of fixed overhead rates, as provided herein, in the event that a reasonably accurate forecast of overhead rates is determined to be impracticable. The option to terminate the use of fixed overhead rates for the future period shall be invoked on written notice, prior to the effective date of overhead rate revision for the next succeeding period.

(ii) Termination of fixed overhead rates shall be evidenced by a supplemental agreement to this contract, providing for reimbursement on the basis of audited actual cost or by such other method of determination or form of contract that may be mutually agreed upon for the period subsequent to the date of termination under this clause.

(8) All costs of packing, crating, boxing, marking, tagging, labeling, shipment, transportation, loading, unloading, dismantling, moving, removing, and storage charges on materials, supplies and equipment.

(9) Subject to the provisions of the clause hereof entitled 'Subcontracts', all payments and expenditures in connection with

**SECRET**

**SECRET**

Contract No. RD-107

subcontracts made for the purpose of performing this contract and expenditures for consulting services and to reimburse other employers for services performed by their employees released for or engaged in performance of the work provided for under this contract.

(10) The cost of reconstructing and replacing any of the work or property lost, destroyed or damaged and not covered by insurance (except losses, destruction or damage to property for which Contractor is liable pursuant to the clause hereof entitled 'Government Property') but the Contractor shall not undertake the reconstruction or replacement of property of the Government except with the prior written authorization of the Contracting Officer.

(11) To the extent consistent with the Contractor's policy in its regular operations the cost, including incidental expenses and premiums (if any) of providing such death, injury, interment, and other benefits for the Contractor's employees engaged in performing services under this contract as the Contracting Officer may approve or require.

(12) To the extent such expenditures are consistently recorded by the Contractor in its regular operations as elements of material costs and to the extent that direct reimbursement for such expenditures under this clause does not represent duplication of payments made pursuant to any other provision of this contract, all sales, excise, use, occupational, gross receipts, import or export taxes, duties or imposts or other similar taxes or charges and all permits and license fees (but not Federal income and excess profits taxes) required or used in connection with work provided for under this contract.

(13) All costs and expenses of demonstrations and tests performed by the Contractor at the request of the Government under this contract and not otherwise reimbursable hereunder.

(14) With the approval of the Contracting Officer all rentals incurred in connection with the use of special facilities (to the extent such use is permitted under this contract) not customarily employed in the Contractor's ordinary operations.

(15) To the extent not reimbursable under any facilities contract between the Contractor and the Government, all costs and expenditures incurred by the Contractor in connection with the storage of any necessary facilities which shall be supplied to the Contractor by the Government or required by the Contractor hereunder, to carry out the work and which shall be left with the Contractor after completion or termination of this contract; and all costs

-53-

**SECRET**

**SECRET**

Contract No. RD-107

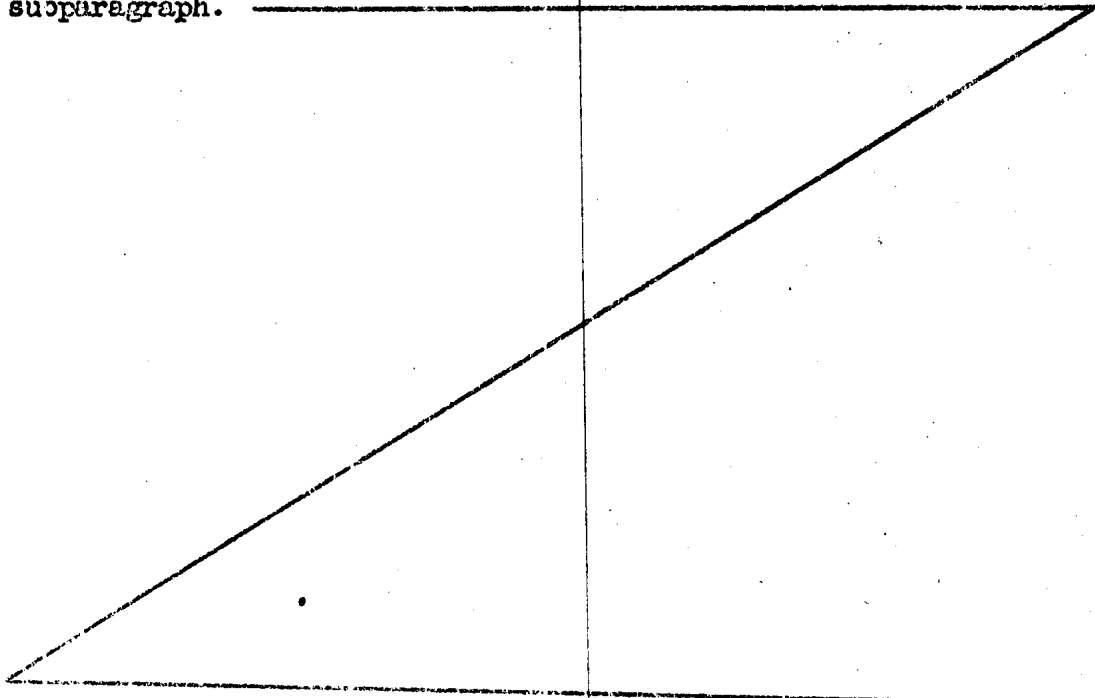
and expenditures incurred by the Contractor before or after such completion or termination in connection with dismantling, moving, boxing, shipping and transporting such facilities.

(16) To the extent not otherwise recoverable, the cost incurred by the Contractor in complying with the provisions of paragraphs (f) (iii) and (1) of the clause hereof entitled 'Government Property'. The parties may agree upon a negotiated sum therefor in lieu of the actual costs thereof.

(17) Royalties and other costs incurred in the acquisition of necessary patent and technical rights, provided that in the case of such rights acquired solely for the purpose of carrying out this contract, arrangement for the use of such patent and technical rights under this contract shall be subject to written approval of the Contracting Officer.

(18) All costs and expenses reimbursable under any other clause of this contract.

(19) To the extent not reimbursable under any facilities contract between the Contractor and the Government and subject to the approval of the Contracting Officer, all materials and supplies directly applicable to plant alterations or to rearrangement of plant or facilities in connection with the work provided for under this contract. No materials or supplies coming within paragraph (b) (1) above will be considered to come within the scope of this subparagraph.

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IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

**NO FUNDS INVOLVED**

Issued in accordance with memo  
from Chr, ED/OC to Chr, PD/OL  
dated 19 Jan 1956.

THE UNITED STATES OF AMERICA

BY                     

TITLE

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181

I, , certify that I am the **Attesting Secretary**

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of the corporation named as Contractor herein; that

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who signed this contract on behalf of the Contractor was then

**Manager - Marketing**

25X1

\_\_\_\_\_ said corporation; that said contract was duly signed

for and in behalf of said corporation by authority of its governing body,

and is within the scope of its corporate powers.

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/s/ [Redacted] (Corporate Seal)  
**Attesting Secretary**

**SECRET**

## APPENDIX I

TERMINATION

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, (1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default, or (2) whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (5) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or in part, in accordance with the provisions of this contract; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Term-

(For Fixed-Fee Contracts)

**SECRET**

ination, (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract; (7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph, provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fixed-fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter a storage agreement covering the same, provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than two years from the effective date of termination, unless one or more extensions in writing are granted by the

- 2 -

**SECRET**

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**SECRET**

subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal.

(iv) There shall be included therein a portion of the fixed-fee payable under the contract determined as follows:

(A) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fixed-fee payments previously made hereunder.

(B) In the event of the termination of this contract for the default of the Contractor, the total fixed-fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract.

If the amount determined under this paragraph is less than the total payment of fixed-fee theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

(2) If the settlement includes only the fixed-fee, the amount thereof will be determined in accordance with subparagraph (e)(1) (iv) above.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have

**SECRET**

against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fixed-fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition.

(j) The provisions of this clause relating to the fixed-fee shall be inapplicable if this contract does not provide for payment of a fixed-fee.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

- 5 -

(For Fixed-Fee Contracts)